

## **AGENDA**

### **COMMITTEE ON LANDS AND BUILDINGS**

**May 29, 2007**

**Aldermen Thibault, Smith,  
Forest, Roy and Long**

**5:00 PM**

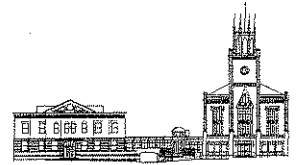
**Aldermanic Chambers  
City Hall (3<sup>rd</sup> Floor)**

1. Chairman Thibault calls the meeting to order.
2. The Clerk calls the roll.
3. Communication from Glen Ohland regarding two items relating to the JacPac properties:
  - A. Draft purchase and sale agreement anticipated to be submitted at meeting
  - B. Lease opportunity with Keyspan. MHRA has voted to approve execution of a License Agreement subject to review and approval of the use by the appropriate Aldermanic Committee or full Board of Mayor and Aldermen.
4. If there is no further business a motion is in order to adjourn.



## CITY OF MANCHESTER

### Economic Development Office



TO: Lands and Buildings Committee  
CC: Board of Mayor and Alderman  
FR: Glen Ohlund  
RE: Jac-Pac development update and new lease opportunity  
Date: 23 May 2007

I wanted to provide you with two updates on the Jac-Pac redevelopment that warrant your attention at the special meeting on May 29, 2007:

#### Purchase and Sales Agreement

- A draft Purchase and Sales agreement was provided by Anagnost Investments to appropriate City Departments earlier this month. Review and minor changes were made to the document and we anticipate an agreement will be completed in time for the meeting next Tuesday (5/29/07).

#### Keyspan lease opportunity

- Remediation of materials in the river has led to a request by KeySpan Energy to lease a portion of the westernmost parking lot on the Jac-Pac Parcel (behind the Freezer Building) as a staging area for some of their work. An effort is underway to address the needs of all parties, while protecting the current negotiations for redevelopment. The MHRA Board has voted and approved execution of the License Agreement, subject to review and approval of the use by the appropriate Aldermanic Committee or the full Board of Mayor and Aldermen. We will update you on this item Tuesday night.

## LICENSE AGREEMENT

This License Agreement (the "Agreement"), made this \_\_\_\_ day of \_\_\_\_\_, 2007 by and between **MHRAI, Inc.**, with principal offices at 198 Hanover Street, Manchester, New Hampshire 03104 (hereinafter referred to as "Licensor"), and **Energy North Natural Gas, Inc. d/b/a KeySpan Energy Delivery New England**, a New Hampshire corporation, having its principal office at 52 Second Avenue, Waltham, MA 02451 (hereinafter referred to as "Licensee"). Licensor and Licensee are collectively referred to herein as the "Parties."

## WITNESSETH

WHEREAS, Licensor is the owner of certain real property located at 163 Hancock Street, Manchester, New Hampshire 03104, which property is described and more particularly identified in Exhibit A ("Licensor's Property"), attached hereto and made a part hereof; and

WHEREAS, Licensor has agreed to grant a license to Licensee for Licensee's use of a portion of Licensor's Property, consisting of a vacant area of approximately 50,000 sq.-ft. within the parking lot of Licensor's Property, for the temporary storage and processing of sediment that shall be dredged from the Merrimack River. Such portions of Licensor's Property, as described in Exhibit A are referred to herein as the "Site."

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, Licensor hereby grants to Licensee a license to enter upon, use and occupy the Site, as set forth herein.

## ARTICLE I APPROVED ACTIVITIES AND ACCESS

A. Licensor hereby grants to Licensee and the Licensee Parties (as defined herein), subject to the terms and conditions hereof, a license to enter upon, use and occupy the Site solely for the purpose of the temporary storage and processing of sediment that shall be dredged from the Merrimack River. The specific activities listed below under this Subsection A are referred to herein as the "Approved Activities."

### Approved Activities:

- Construction of temporary sediment containment areas and construction of a temporary floating dock and access ramp from the Merrimack River to the Jac Pac Plant Property.
- Selective trimming of brush and/or tree limbs as permitted by the New Hampshire Department of Environmental Services (the "NHDES") and other applicable federal, state or local authorities.
- Temporary storage and stabilization of dredged sediment and temporary storage and use of equipment and materials necessary to perform the stabilization of the dredged sediment.

- Staging and use of temporary office trailers, storage trailers and portable sanitary facilities.
- Establishment of temporary electric, phone and cable service lines and meters.
- Installation of temporary fencing and implementation of additional temporary Site improvements as may be necessary for security and lighting.
- Temporary closing or rerouting of the walkway between Licensor's Property and Merrimack River.
- Restoration of the Site to its original condition at the completion of Approved Activities as specified in the Scope of Work, as set forth in Exhibit B, attached hereto and made a part hereof.

The Approved Activities are more particularly described in Licensee's Scope of Work, attached hereto as Exhibit B .

B. In performing the Approved Activities, Licensee shall take all necessary and reasonable precautions for the health and safety of its employees, agents, contractors and subcontractors (collectively, the "Licensee Parties"), Licensor's employees, agents, contractors, subcontractors, tenants, licensees and invitees ("Licensor Parties"), the general public, and prospective developers.

C. This Agreement shall not be deemed to grant Licensee any right to use the Site for any purpose other than the Approved Activities. Other than the Licensee Parties, Licensee shall not permit any persons or entities to use the Site for any purpose other than as contemplated by this Agreement. Nothing in this Agreement is intended to create any third party rights or confer such rights upon any person or entity, other than the Parties hereto and the Licensee Parties.

D. Licensor and Licensor's designees retain the right to access the Site to review the Approved Activities.

E. In performing the Approved Activities the Site must remain secured. Therefore, all work must either be done during the normal work hours of the security staff on Site or the Licensee shall provide additional security staff.

## ARTICLE II

### TERM OF AGREEMENT, RENT

A. The term of this Agreement shall commence upon Licensee's access onto the Site on or about June 1, 2007, for a term of eight (8) months (the "Term") and is subject to renewal upon the express written consent of Licensor. Work will not commence until the Licensor has received and approved the NHDES permit.

B. Licensee's rent shall be Eight Thousand Dollars (\$8,000.00) per month or any part thereof and shall be due on or before the first day of each month. Rent payments shall be made payable to the MHRA I, Inc. and mailed to the attention of Kenneth R. Edwards at 198 Hanover Street, Manchester, New Hampshire 03104.

C. Licensor may terminate this License Agreement with a thirty (30) day written notice to the Licensee.

### **ARTICLE III**

#### **WORK, MAINTENANCE, RESTORATION, AND REPAIR**

A. All of the costs and expenses related to the foregoing work and the Approved Activities shall be the sole responsibility of Licensee.

B. In the course of performing the Approved Activities, Licensee shall keep the Site in a secure and orderly condition as determined by Licensor. Licensee shall repair any damage Licensee or the Licensee Parties may cause to the Site and, upon vacating the Site, restore the Site to the original condition, reasonable wear and tear excepted.

### **ARTICLE IV**

#### **COMPLIANCE WITH LAWS**

Licensee will comply with any and all applicable laws, ordinances, permit and zoning requirements of any federal, state or municipal body or agency pertaining to Licensee's use and occupation of the Site and performance of the Approved Activities.

### **ARTICLE V**

#### **HOLD HARMLESS**

Licensee shall indemnify and hold harmless Licensor from any liabilities, losses or damages, arising out of Licensee's negligent use or intentional misuse of the Site or any unintended consequence resulting from the Approved Activities. Licensor shall have the right to demand that Licensee undertake to defend any and all such claims, providing only that the claim shall be against Licensor. Licensee shall have no obligation to indemnify or defend against any loss, judgment, claim or suit to the extent such loss, judgment, claim or suit is the result of the negligence or willful misconduct of Licensor.

### **ARTICLE VI**

#### **ENVIRONMENTAL MATTERS**

A. Licensee represents and warrants that, with respect to releases or threats of releases of hazardous materials at the Site occurring during the Term of this Agreement which Licensee cause or for which Licensee is otherwise legally responsible, Licensee shall provide all required notifications and shall promptly take all actions necessary and required pursuant to all applicable law to abate, prevent, and eliminate the release or threat of release of hazardous materials.

B. Licensee shall indemnify and hold harmless Licensor from any liabilities, losses or damages arising out of any release of hazardous materials at the Site occurring during the Term of this Agreement which Licensee causes or for which Licensee is otherwise legally responsible, including without limitation any such claims or losses due to alleged property

damage or personal injury, or injury, destruction, or loss of natural resources or which may occur after the term of this License but arise as a result of the Approved Activities.

## **ARTICLE VII** **INSURANCE REQUIREMENTS**

Prior to the commencement of the Approved Activities, a Certificate of Insurance from Licensee and/or all of Licensee's contractors/subcontractors, that perform activities on the Site relative to this Agreement, shall be furnished to Licensors by Licensee and/or Licensee's contractors/subcontractors. Licensee shall procure and Licensors must be added to and insured under (i) a commercial general liability policy of not less than One Million (\$1,000,000) Dollars, (ii) an umbrella policy covering protection in an amount not less than Three Million (\$3,000,000) Dollars combined single limit coverage for injury, death, and property damage arising out of any one occurrence, and such policy must not contain any "x, c and u" exclusions, (iii) an automobile liability policy covering all owned, hired and non-owned vehicles with a combined single limit of not less than One Million (\$1,000,000) Dollars, and (iv) Worker's Compensation and Employer's Liability as required by law. Licensee shall name MHRA I, Inc. and the City of Manchester as an additional insured (except for Worker's Compensation). The certificate of insurance shall contain a provision whereby the policy may not be canceled unless Licensors is given at least (30) days prior written notice of such cancellation. Insurance as specified herein must be maintained at all times throughout the Term of this Agreement.

## **ARTICLE VIII** **NOTICES**

Any notice or demand which, under the terms of this Agreement, or under any statute, must or may be given or made by the Parties hereto, shall be in writing, and may be given or made by hand delivery, provided same is acknowledged by written receipt, or by mailing the same by registered/certified mail, return receipt requested, or by nationally recognized overnight delivery service, addressed to the other Party at the following addresses:

(a) For Licensors:

Kenneth R. Edwards  
Assistant Executive Director  
Manchester Housing and Redevelopment Authority  
198 Hanover Street  
Manchester, New Hampshire 03104

(b) For Licensee:

Brian J. Mulcahy, Counsel  
Energy North Natural Gas, Inc. d/b/a  
KeySpan Energy Delivery New England  
52 Second Avenue  
Waltham, Massachusetts 02451

**ARTICLE IX**  
**GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire.

**ARTICLE X**  
**ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding between the Parties regarding access to, and use and occupancy of, the Site, and the Approved Activities, and no amendments, additions or modifications hereto shall be valid unless in writing and signed by the Parties hereto.

**ARTICLE XI**  
**BINDING EFFECT**

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns.

**ARTICLE XII**  
**RISK OF LOSS**

Licensee shall bear the entire risk of loss or damage to its personal property arising out of its respective use and occupation of the Site.

**ARTICLE XIII**  
**ASSIGNABILITY AND ADDITIONAL PARTIES**

This Agreement and the rights and obligations associated herewith may not be assigned or transferred by Licensee without the prior written consent of Licensor, such consent not to be unreasonably withheld.

**ARTICLE XIV**  
**SEVERABILITY**

If any provision of this Agreement shall be declared to be unenforceable in a particular jurisdiction, the remaining provisions hereof shall remain in full force and effect.

**ARTICLE XV**  
**COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall be an original and which shall constitute the same instrument.

**ARTICLE XVI**  
**WAIVER**

No delay or omission by either Party in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed, or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient.

If any agreement or covenant herein shall be breached by either Party and thereafter waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE XVII**  
**ARTICLE HEADINGS**

The article headings and other titles used in this Agreement are for convenience only and shall not affect the construction of any terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives on the date first written above.

ENERGY NORTH NATURAL GAS, INC.  
D/B/A KEYSPAN ENERGY DELIVERY  
NEW ENGLAND

By: Barbara Kates-Garnick

Name: Barbara Kates-Garnick

Title: Vice-President

Date: May 21, 2007

MHRA I, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

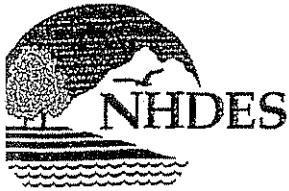
Date: \_\_\_\_\_

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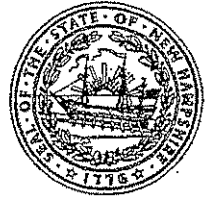


**Exhibit "A"**  
**(Licensor's Property)**

**Exhibit "B"**  
**(Licensee's Scope of Work)**



The State of New Hampshire  
*Department of Environmental Services*



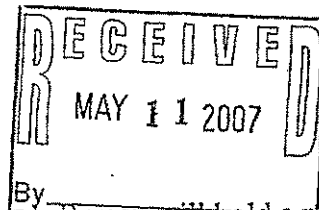
May 08, 2007

Patricia Haederle  
Keyspan Energy Delivery  
52 Second Ave  
Waltham, MA 02451

05-10-07A11:59 RCVD

RE: File #2007-00177 - Manchester - Merrimack River

Dear Ms. Haederle:



The Department of Environmental Services (DES) Wetlands Bureau will hold a public hearing, under the authority of RSA 482-A, on the application of Keyspan Energy Delivery, File number 2007-00177, on property located on off South Commercial Street in Manchester, Tax Map/Lot # 909 / ROW.

You, or your agent, will present details of your project to dredge approximately 9,000 cubic yards of coal tar and visually-impacted sediments from the bed of the Merrimack River.

The hearing will be conducted at the Health and Human Services Building in Room 213, 29 Hazen Drive, Concord, N.H. on May 17, 2007 at 01:00 PM. This hearing will be tape-recorded and all materials presented at the hearing will remain with the file.

Plans are on file at the DES Wetlands Bureau office, 29 Hazen Drive, Concord, N.H., and may be examined by any interested party during the working hours of 8:00 a.m. to 4:00 p.m. The Bureau will accept a written statement regarding these matters prior to the hearing.

Sincerely,

William A. Thomas, CWS  
Wetlands Permit Supervisor  
DES Wetlands Bureau

cc: See attached list



Anchor Environmental, L.L.C.  
2 Dundee Park Suite 102  
Andover, MA 01810  
(978) 474-9090 phone  
(978) 474-9080 fax

May 18, 2007  
060327-01

**Via Electronic Mail**

Richard Lee Webster  
Housing Development Manager  
Manchester Housing and Redevelopment Authority  
89 Pine Street  
Manchester, NH 03103-6231

**Re:** Temporary Riverwalk Relocation  
Merrimack River Dredging Project

Dear Mr. Webster:

This letter is in response to the City's request to provide the public with access to the Riverwalk during non-working days during the duration of Merrimack River Dredging Project. In order to allow for the movement of dredged sediments from the Merrimack River to the Jac-Pac facility, a temporary ramp must be constructed through the existing Riverwalk just north of the Queen City Bridge. This will require a portion of the Riverwalk to be temporarily removed and regraded so as to allow vehicle movement between the river's edge and the paved area of the Jac-Pac facility. In order to provide the public access to the Riverwalk, it will have to be temporarily relocated as shown on the attached figure. The conceptual plan may be modified once we are in the field to ensure the most efficient layout and access is provided.

The plan is to construct a series of temporary fences and locked gates to reroute the Riverwalk. Downstream and upstream from the ramp, a fence will be installed up the slope from the river to the existing fence that runs parallel to the eastern edge of the Riverwalk. These fences will prevent public access to the ramp and temporary dock that will be constructed to implement the dredging project. A locking gate will be installed at both locations where the Riverwalk is crossed by these newly constructed temporary fences. Two other gates will be installed in the existing fence that runs along the eastern edge of the Riverwalk and both locations where the Riverwalk will be closed off. These will be unlocked during non-working days (e.g., weekends) to allow the public access to a temporary fenced area that will cross from the existing Riverwalk onto the Jac-Pac facility and back to the Riverwalk. On Monday mornings, these gates will be relocked and the public will be prevented use of the Riverwalk during working days.

Signage will be posted north and south of the proposed work informing the public of the temporary Riverwalk closure and the hours the temporary bypass will be open. As an additional measure to ensure public safety, security personnel will be hired to patrol the Jac-Pac facility during non-working hours/days.

As detailed in the Remedial Design Report, upon completion of construction activities, the river bank will be restored and the Riverwalk repaired and reopened to the public.

If you have any additional questions or comments, please feel free to contact me.

Sincerely,

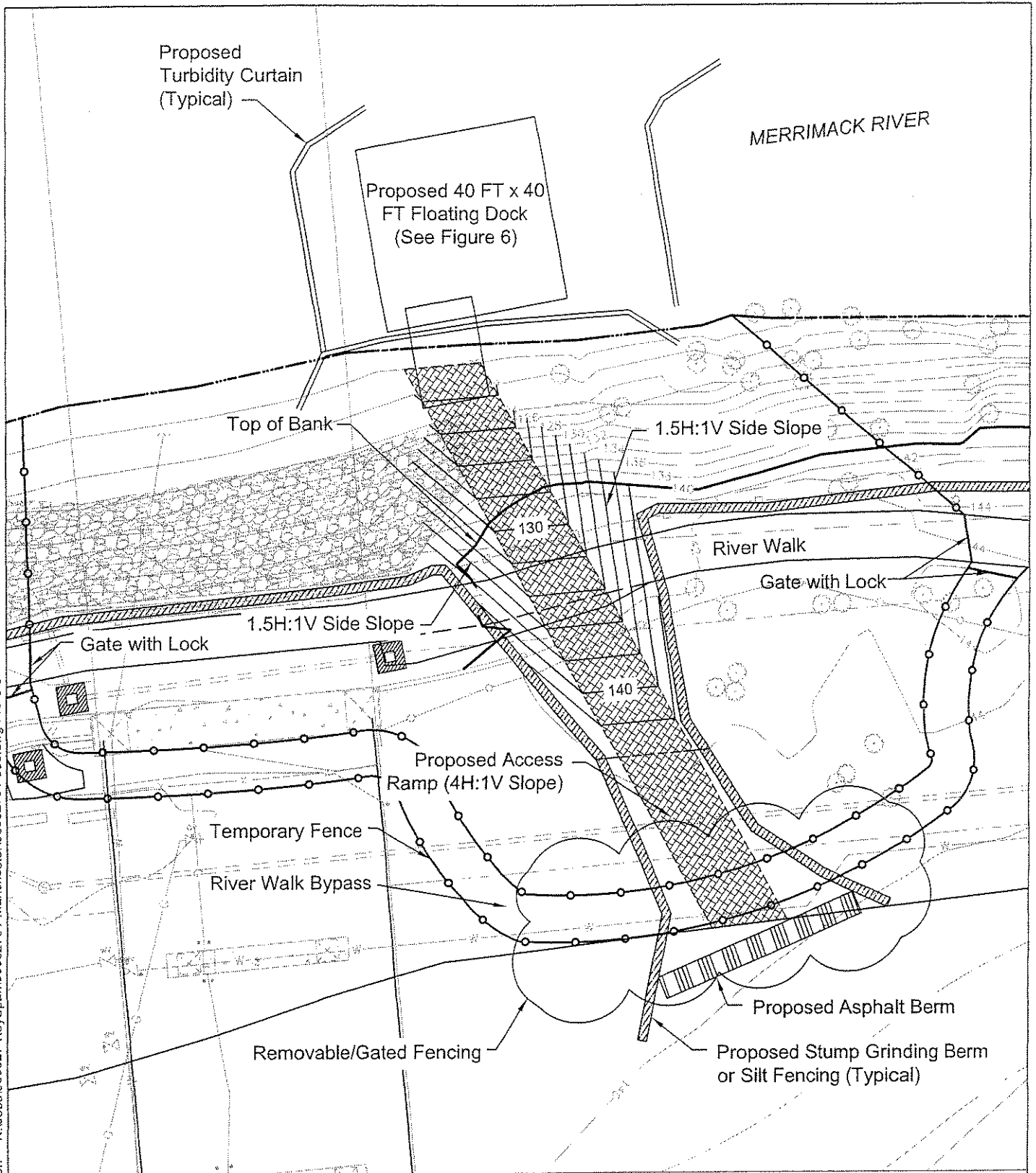
Anchor Environmental, L.L.C.



W. Christian Leuteritz, PE, LSP

Cc: Patricia Haederle - KeySpan  
Mike McCluskey - NHDES  
Deb Hale - KeySpan  
David Winslow - City of Manchester, Department of Highways  
Randall Shuey - Gove Environmental Services  
Anthony Pisanelli - Maxymillian Technologies

May 16, 2007 1:09pm cdauidson K:\Jobs\060327-KeySpan\06032701-Manchester\06032701-036.dwg FIG 6-3



#### Notes:

1. Ramp to be graded to 4H:1V slope. Surface of ramp to be 4 inches thick layer of 1.5 inches crushed stone.
2. An asphalt berm will be installed at the top of the ramp to prevent any stormwater from flowing off pavement and onto ramp.
3. All sideslopes of ramp will be covered with 6 inches of stump grindings for slope protection.

4. All catch basins in staging area to be protected.
5. Drawing source: Maxymillian Technologies
6. Horizontal datum: NAD 83/92 (HARN)  
Vertical datum: NAVD88



0 30  
Scale in Feet

**Figure 6-3**  
Approximate Temporary Riverwalk Configuration  
Merrimack River